

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT

LEGAL SECTION

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ANNE STEVASON, *Acting Chief Counsel*

January 28, 2002

Robyn A. Babcock
Sidley Austin Brown & Wood
555 West Fifth Street
Los Angeles, CA 90013

Re: Rest Period Provisions

Dear Ms. Babcock:

This is in response to your letter of October 9, 2001 to Labor Commissioner Arthur S. Lujan. In your letter, you refer to a letter issued by the Labor Commissioner on September 17, 2001 on the subject of the rest period provisions under Industrial Welfare Commission ("IWC") Wage Order 16. In your letter, you correctly note that every wage order, not just Order 16, contains the following language in regards to the rest period: "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period." Of course, there are additional provisions regarding rest periods under Order 16 that are unique to that Order, and that is why much of the discussion about the rest period provisions under Order 16 is not applicable to employers covered by other orders. But, focusing on the language that is common to all wage orders, you ask whether we would agree that under all of the orders, and not just Order 16, an employer must only "authorize and permit" employees to take rest periods. In this regard rest periods differ from meal periods, during which an employer has an affirmative obligation to ensure that workers are actually relieved of all duty, not performing any work, and (with the exception of health care workers under Orders 4 and 5) free to leave the employer's premises.

This distinction between meal periods and rest periods is present in all of the wage orders, not just Order 16. Thus, as Commissioner Lujan stated in the earlier letter, an employer is not subject to any sort of penalty or premium pay obligation if an employee who was truly authorized and permitted to take a rest

2002.01.28

January 28, 2002

Page 2

break, as required under the applicable wage order, *freely chooses without any coercion or encouragement* to forego or waive a rest period. Of course, as required by the various wage orders, the ~~required~~ rest periods "shall be counted as hours worked for which there shall be no deduction from wages." (See, e.g., section 12, Order 4-2001.)

Thank you for your interest in California wage and hour law. Feel free to contact us with any other questions.

Sincerely,



Anne Stevason
Acting Chief Counsel

AS/mel

cc: Arthur Lujan
Tom Grogan
Roger Miller
Greg Rupp
Nance Steffen
Bridget Bane, Executive Officer, IWC
Stephen J. Smith, Director

2002.01.28